

PART 25

FOREIGN ACQUISITION

25.000 Scope of part.

FAR as of FAC 90-25

Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures for the application to foreign acquisitions of international agreements, customs and duties, the clause at 52.215-1, ~~Examination of Records by Comptroller General~~, and use of local currency for payment.

FAR as revised

Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures pertaining to international agreements, customs and duties, the clause at 52.215-2, **Audit and Records—Negotiation**, and use of local currency for payment.
[FAC 90-31]

25.105 Evaluating offers.

FAR as of FAC 90-25

(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see 25.101), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business ~~that is not a labor surplus area concern~~; or

(2) More than 12 percent, if the domestic offer is from a small business concern ~~or any labor surplus area concern~~.

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FAR as revised

(a) Unless the agency head determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see 25.101), inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business; or

(2) More than 12 percent, if the domestic offer is from a small business concern. [FAC 90-32]

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25.404 Reserved [FAC 90-32]

~~25.404—Labor surplus area set-asides.~~

~~—(a) Except as provided in paragraph (b) of this section, when responsive offers are received for an eligible product, labor surplus area preference shall be accorded only to small business concerns.~~

~~—(b) When responsive offers are received for an Israeli end product in an amount of at least \$50,000 but less than the dollar threshold described in 25.402(a)(1), preference shall be accorded to all labor surplus area concerns.~~

25.405 Procedures.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used:</p> <p>* * * *</p> <p>(e) Within 7 working days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries written notice in accordance with 14.408-1(a)(2) and 15.1004(e)(2).</p>	<p>When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used:</p> <p>* * * *</p> <p>(e) Within three days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries notice in accordance with 14.409-1 and 15.1002. "Day," for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday. [FAC 90-31]</p>

25.703 Exceptions.

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for small purchases, unless otherwise provided by the agency in the case, or the agency head for other than small purchases. A copy of the written approval shall be furnished to the contractor.</p>	<p>In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for acquisitions at or below the simplified acquisition threshold unless otherwise provided by agency procedures. In the case of contracts in excess of the simplified acquisition threshold, the approval level is the agency head. A copy of the written approval shall be furnished to the contractor.</p>

25.901 Omission of audit clause

<i>FAR as of FAC 90-25</i>	<i>FAR as revised</i>
<p>(a) <i>Definition.</i> "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.</p> <p>(b) <i>Policy.</i> As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106-1(b)(3), the contracting</p>	<p>(a) <i>Definition.</i> "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.</p> <p>(b) <i>Policy.</i> As required by 10 U.S.C. 2313, 41 U.S.C. 254d, and 15.106-1(b), the contracting</p>

officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause at 52.215-1, Examination of Records by Comptroller General. ~~Omission of the clause~~ should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.

(c) *Conditions for omission.* (1) The contracting officer may ~~omit the clause at 52.215-1, Examination of Records by Comptroller General, from contracts with foreign contractors—~~

(i) If the agency head determines, with the concurrence of the Comptroller General ~~or a designee, the omission of the clause~~ will serve the public interest; or

(ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its ~~books, documents, papers, or~~ records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(2) ~~When a determination under subparagraph (c)(1)(ii) of this section is the basis for omission of the clause at 52.215-1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination; except that this requirement is not applicable to the Department of Defense.~~

(d) *Determination and findings.* The determination and findings shall—

- (1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;
- (2) Describe the efforts to include the clause;
- (3) State the reasons for the contractor's refusal to include the clause;
- (4) Describe the price and availability of the property or services from the United States and other sources; and
- (5) Determine that it will serve the interest of the United States to ~~omit~~ the clause.

officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the **basic** clause at 52.215-2, **Audit and Records—Negotiation, which authorizes** examination of records by **the** Comptroller General. **Use of the clause with Alternate III** should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the **basic** clause.

(c) *Conditions for use of Alternate III.* The contracting officer may **use the clause at 52.215-2, Audit and Records—Negotiation, with its Alternate III in** contracts with foreign contractors—

(1) If the agency head, **or designee,** determines, with the concurrence of the Comptroller General, **that waiver of the right to examination of records by the Comptroller General** will serve the public interest; or

(2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records **as defined at 4.703(a),** available for examination, and the agency head, or designee, determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.

(d) *Determination and findings.* The determination and findings shall—

- (1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;
- (2) Describe the efforts to include the **basic** clause;
- (3) State the reasons for the contractor's refusal to include the **basic** clause;
- (4) Describe the price and availability of the property or services from the United States and other sources; and
- (5) Determine that it will serve the interest of the United States to **use the clause with its Alternate III.**